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SENATE BILL 491

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Dede Feldman

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE SOLID WASTE ACT TO INCREASE FEES CHARGED FOR PROCESSING SOLID WASTE PERMITS; RECONCILING CONFLICTING AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1991 BY REPEALING LAWS 1991, CHAPTER 185, SECTION 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-9-8 NMSA 1978 (being Laws 1990, Chapter 99, Section 8, as amended by Laws 1991, Chapter 185, Section 2 and also by Laws 1991, Chapter 194, Section 3) is amended to read:

"74-9-8. BOARD ADOPTION OF ~~[INITIAL]~~ REGULATIONS.--~~[No later than December 31, 1991]~~ The board shall adopt regulations under the authority of this section to:

A. implement, administer and enforce a program for the cost-effective and environmentally safe siting,

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1 construction, operation, maintenance, closure and post-closure
2 care of solid waste facilities, including financial
3 responsibility requirements for solid waste facility owners and
4 operators and also including requirements that assure that the
5 relative interests of the applicant, other owners of property
6 likely to be affected and the general public will be considered
7 prior to the issuance of a permit for a solid waste facility;

8 B. define the solid wastes that are considered
9 special wastes;

10 C. establish specific requirements for the
11 detoxification and disposal of special wastes;

12 D. establish classifications of solid waste
13 facilities and define what types of solid waste may be
14 processed or disposed of in each classification;

15 E. establish performance standards for the
16 construction and operation of solid waste facilities that will
17 assure protection of ground water quality from degradation by
18 contaminants from solid waste facilities consistent with the
19 provisions of the Water Quality Act and the regulations and
20 standards established under that act by the water quality
21 control commission, provided such regulations shall not allow
22 permitting of any active solid waste facility larger than five
23 hundred acres;

24 F. establish performance standards for
25 transformation facilities that will assure protection of the

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1 state's environment;

2 G. establish requirements and procedures for the
3 granting or denial of an application to modify a solid waste
4 facility permit under Section 74-9-25 NMSA 1978;

5 H. establish requirements and procedures for
6 commercial haulers to minimize littering and otherwise prevent
7 degradation of the environment;

8 I. establish an applicant fee schedule for
9 processing permit applications that is based on costs of
10 application review incurred by the division and also costs
11 incurred for investigations of applicants by state departments
12 and agencies other than the division, which regulation shall
13 provide for the reimbursement of these costs to the division or
14 other department or agency from the fees charged and shall also
15 limit the fee to be not greater than [~~ten thousand dollars~~
16 ~~(\$10,000)~~] one hundred thousand dollars (\$100,000);

17 J. establish requirements and procedures for a
18 person to obtain a variance from the application of a
19 substantive regulation to the person if the person files a
20 written application for a variance with the director and
21 demonstrates to the director's satisfaction that:

22 (1) application of the regulation would result
23 in an arbitrary and unreasonable taking of the applicant's
24 property or would impose an undue economic burden upon any
25 lawful business, occupation or activity; and

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1 (2) granting the variance will not result in
2 any condition injurious to human health, safety or welfare or
3 the environment;

4 K. assure that no variance will be granted under
5 the provisions of Subsection J of this section until the
6 director has considered the relative interests of the
7 applicant, other owners of property likely to be affected and
8 the general public and that any variance or renewal of a
9 variance shall be granted for time periods and under conditions
10 consistent with reasons for the [~~various~~] variance but within
11 the following limitations:

12 (1) if the variance is granted on the grounds
13 that there are no practicable means known or available for the
14 adequate prevention of degradation of the environment or the
15 risk to the public health, safety or welfare, it shall continue
16 only until the necessary means for the prevention of the
17 degradation or risk become known and available; or

18 (2) if the variance is granted on the grounds
19 that it is justified to relieve or prevent hardship of a kind
20 other than that provided for in Paragraph (1) of this
21 subsection, it shall not be granted for more than one year;

22 L. establish a list of solid wastes that shall not
23 be transferred, disposed of or transformed in a solid waste
24 facility and prohibit the disposal or transformation of those
25 solid wastes in solid waste facilities;

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1 M. establish recordkeeping procedures for solid
2 waste transfer, landfill disposal and transformation facilities
3 that shall include requirements for recording the type, amount
4 and origin of solid waste transferred, disposed of or
5 transformed at the facility and that require operators of
6 landfill disposal, solid waste transfer and transformation
7 facilities within the state to:

8 (1) maintain records in a form required by the
9 division and file them with the division indicating the type,
10 amount, origin and location in a landfill disposal facility of
11 solid waste accepted by the facility;

12 (2) maintain copies of the records required
13 under Paragraph (1) of this subsection after closure in a
14 manner and for the length of time prescribed by the division;
15 and

16 (3) make all required records available for
17 inspection by the division and the general public during normal
18 business hours; and

19 N. require the division to establish a solid waste
20 facility operator certification program."

21 Section 2. REPEAL.--Laws 1991, Chapter 185, Section 2 is
22 repealed.